

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fendley	Team: Squad #5	CCRB Case #: 201400251	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 11/28/2013 3:19 AM	Location of Incident: 42-12 Bell Boulevard; 111th Precinct Stationhouse	Precinct: 111	18 Mo. SOL 5/28/2015	EO SOL 5/28/2015	
Date/Time CV Reported Fri, 01/03/2014 6:08 PM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Thu, 01/09/2014 12:24 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Garcia	20856	948030	111 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kevin Golden	07615	948034	111 PCT
2. POM Romeo Francis	21408	945191	111 PCT
3. SGT Kevin Zweigbaum	02948	920993	111 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Garcia	Force: PO Daniel Garcia used physical force against § 87(2)(b) at 42-12 Bell Boulevard in Queens.	
B.POM Daniel Garcia	Discourtesy: PO Daniel Garcia spoke rudely to § 87(2)(b) at 42-12 Bell Boulevard in Queens.	
C.POM Daniel Garcia	Discourtesy: PO Daniel Garcia spoke rudely to § 87(2)(b) at the 111th Precinct stationhouse.	

Case Summary

On January 3, 2014, this complaint was filed by defense attorney § 87(2)(b) via email with the Internal Affairs Bureau on behalf of § 87(2)(b) generating log number 14-0474. The case was forwarded to the CCRB on January 9, 2014.

On November 28, 2013, § 87(2)(b) was intoxicated and was in some type of an altercation in front of Bourbon Street Pub, located at 42-12 Bell Boulevard in Queens, when PO Kevin Golden and PO Daniel Garcia, both of the 111th Precinct, approached him. § 87(2)(b) resisted arrest and while he was on the ground, PO Garcia stomped on him three times (**Allegation A**). It was alleged that while PO Garcia stomped on § 87(2)(b) he said “I’ll fuck you up” (**Allegation B**). It was also alleged that at the 111th Precinct stationhouse, PO Garcia called § 87(2)(b) a “motherfucker” and told him to go “fuck” himself (**Allegation C**). § 87(2)(b) was arrested for § 87(2)(b), § 87(2)(a) 160.50 (encl. 5 W-Y).

There is a video of this incident (located in IA #45; transcription encl. 3 I). It was taken by a friend of § 87(2)(b) s friend, known only to him as “§ 87(2)(b)”. The video was provided to the CCRB by § 87(2)(b) s attorney, § 87(2)(b).

Mediation, Civil and Criminal Histories

This case was not suitable for mediation because of his pending charges at the time. § 87(2)(b) had not filed a Notice of Claim with the City of New York with regard to the incident, as of February 10, 2015, which is eleven months past the 90-day filing expiration (encl. 8 J). § 87(2)(b)

Civilian and Officer CCRB Histories

PO Garcia has been a member of the service for five years and there are no substantiated complaints against him. There has been only one additional complaint filed against PO Garcia. CCRB case 201213201 contained an allegation of physical force and was closed as complainant uncooperative. In that case, it was alleged that PO Garcia threw a civilian against a wall causing the civilian to dislocate his shoulder. PO Romeo Francis was a witness in that case, along with the case at hand.

Investigative Findings and Recommendations

Allegation A – PO Daniel Garcia used physical force against § 87(2)(b) at 42-12 Bell Boulevard in Queens.

§ 87(2)(b) alleged that while he was being arrested, PO Garcia stomped on his back three to four times. § 87(2)(b) had been drinking that evening and was not entirely sure what kind or how much alcohol he had consumed. He also did not have an independent recollection of the incident (encl. 3 A-E). However, a friend of § 87(2)(b) s videotaped the incident and showed it to him two days after the incident (encl. 3 F-H). On the video, § 87(2)(b) was on the ground and there was an officer on either side of him, one of whom was identified as Sgt. Kevin Zweigbaum. PO Garcia, who stood near § 87(2)(b) s legs, stomped on his stomach three times.

PO Garcia and PO Golden both said that upon their stop of § 87(2)(b) he punched them each multiple times in the face. Both were consistent in the fact that they and § 87(2)(b) all fell to the ground as a result of the struggle that ensued. Once on the ground, PO Garcia said that § 87(2)(b)

§ 87(2)(b) wrapped an arm around PO Garcia's neck to hold him down while he punched PO Garcia in the face about eight to ten times. Backup officers arrived and stepped in for PO Garcia to further subdue § 87(2)(b). During his CCRB interview, PO Garcia confirmed that after he had been relieved by additional officers, he stomped on § 87(2)(b). He said that the stomps occurred while two other officers had physical contact with each of § 87(2)(b)'s arms. PO Garcia said that he stomped on § 87(2)(b) as a distraction so that § 87(2)(b) would stop resisting arrest. PO Garcia said that after he stomped on § 87(2)(b), § 87(2)(b) did in fact stop resisting and officers were able to handcuff him (encl. 4 D-F). PO Golden said that as he was subduing § 87(2)(b) on the ground, he did not see what PO Garcia was doing or where he was. Sgt. Kevin Zweigbaum said that as soon as he relieved PO Garcia and attempted to gain control of § 87(2)(b) prior to the stomps, § 87(2)(b) was already struggling less than he had with PO Garcia and PO Golden (encl. O-Q).

According to Patrol Guide Procedure 203-11, an officer must use minimum necessary force (encl. A-B).

It is undisputed that PO Garcia stomped on § 87(2)(b)'s stomach three times. However, it remains in dispute whether § 87(2)(b) used additional physical force against PO Garcia while they were on the ground struggling, prior to the stomps. § 87(2)(g)

§ 87(2)(b) PO Garcia no longer had physical contact with § 87(2)(b). On all accounts, § 87(2)(b)'s legs were still moving and he was refusing to be handcuffed. However, there were a minimum of three officers around § 87(2)(b) at the time of the stomps and Sgt. Zweigbaum confirmed that his resistance had already lessened by the time he took over attempting to handcuff § 87(2)(b). PO Garcia confirmed that he stomped on § 87(2)(b) while other officers had some type of physical control over § 87(2)(b) while he was on his back. While these other officer had physical control of § 87(2)(b), PO Garcia stepped away, returned to stomp on § 87(2)(b) and then stepped away again. § 87(2)(g)

§ 87(2)(b) Internal Affairs already substantiated this allegation (encl. IAB 1-105).

§ 87(2)(g)

Allegation B – PO Daniel Garcia spoke rudely to § 87(2)(b) at 42-12 Bell Boulevard in Queens.

Allegation C – PO Daniel Garcia spoke rudely to § 87(2)(b) at the 111th Precinct stationhouse.

§ 87(2)(b) alleged that while PO Garcia was stomping on his back, he said "I'll fuck you up." There is a video of the incident, but nothing the officers say can be heard on it. § 87(2)(b) also alleged that, while being lodged at the front desk of the 111th Precinct stationhouse, PO Garcia said "you hit me motherfucker" and "yeah, yeah, go fuck yourself." § 87(2)(b) a friend of § 87(2)(b)'s, said that he did not hear PO Garcia say anything as he stepped on § 87(2)(b).

PO Garcia denied using any profanity towards § 87(2)(b) at all on the date of the incident. While it was not noted in PO Garcia's memo book what time he returned from the hospital (encl. 4 B-C), PO Golden noted that he left the hospital at 6:30 a.m. and he had the same end of tour as PO Garcia. Further, Sgt. Zweigbaum confirmed that PO Garcia and PO Golden were both at the hospital until after his end of tour at 5:54 a.m.

§ 87(2)(b) was intoxicated and did not even remember most of the incident. Further, the video did not pick up any profanity by officers. § 87(2)(b) § 87(2)(b)'s friend, and all officers were consistent in the fact that they did not hear PO Garcia say anything during the stomps. It was therefore determined that PO Garcia did not use profanity towards § 87(2)(b) at the incident location. Regarding the alleged profanity at the 111th Precinct stationhouse, § 87(2)(b) said that it occurred at the front desk. However, based on PO Golden's memo book and the testimony of Sgt. Zweigbaum, PO Garcia was not even present at the stationhouse when § 87(2)(b) was lodged. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Pod: 5

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date